

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

NOTICE OF PROPOSED RULEMAKING

The San Francisco Bay Conservation and Development Commission proposes to delete its existing Regulation Section 11325, which establishes a policy on ex parte communications in Commission enforcement cases, and adopt proposed Regulation Sections 10280 through 10287, which would adopt a comprehensive policy for ex parte communications that would apply to all quasi-judicial actions of the Commission. The Commission will take action on the proposal only after it considers all comments, objections, and recommendations regarding the proposed actions.

PUBLIC HEARING

The Commission will hold a public hearing on Thursday, July 17, 2003, starting at 1 pm., at the Metro Center Auditorium, 101 8th Street, Oakland, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Commission requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on Tuesday, July 22, 2003**. The Commission will consider only comments received by the Commission by that time. Please submit comments to;

Jonathan Smith
Chief Counsel
San Francisco Bay Conservation and Development Commission
50 California Street, 26th Floor
San Francisco, California 94111

AUTHORITY AND REFERENCE

Government Code Section 66632(f) and Public Resources Code Section 29201e) authorize the Commission to implement these proposed regulations, that implement,

interpret, or make more specific California Government Code Sections 66632, 66638, and 66641.5, California Public Resources Code Sections 29520, 29524, and 29601, and *Arnel Development Co. v. City of Costa Mesa* (1980) 29 Cal. 3d 511, 526; *Sommerfield v. Helmick* (1974) 13 Cal.App. 4th 315, 320; *Burrell v. City of Los Angeles* (1989) 209 Cal.App. 3d 568, 582; *Williams v. County of Los Angeles* (1978) 22 Cal. 3d 731, 736-737; *LaPrade v. Department of Water and Power* (1945) 27 Cal. 2d 47, 51-52; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App. 4th 1152; *Gore v. Board of Medical Quality Assurance* (1980) 110 Cal. App. 3d 184, 192; *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 552; *City of Fairfield v. Superior Court* (1975) 14 Cal. 3d 768; *Flagstad v. City of San Mateo* (1957) 156 Cal.App. 2d 138, 142; *Siller v. Board of Supervisors* (1962) 58 Cal. 2d 479; *Delta Rent-A-Car Systems Inc. v. City of Beverly Hills* (1969) 1 Cal.App.3d 781; *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330, 339; *Safeway Stores, Inc. v. City of Burlingame* (1959) 170 Cal.App.2d 637, 647-648

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission proposes to repeal Commission Regulation Section 11325 (14 Cal. Code of Regulations Section 11325), which establishes the Commission's policy on ex parte communications that occur during a Commission enforcement proceeding. The Commission further proposes to adopt proposed Commission Regulation Sections 10280 through 10288, which would adopt a policy on ex parte communications that would apply to all quasi-judicial activities of the Commission, including Commission action on a pending permit application and Commission action on a pending enforcement action.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other nondiscretionary cost or savings imposed on local agencies: none.

Cost or savings in federal funding to the state: none.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: none.

Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The repeal of this regulation and the adoption of the new regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: none.

Small Business Determination: The Commission has determined that the proposed repeal and adoption will not affect small business. The proposed regulation will only adopt a policy that governs ex parte communications between Commission members and interested members of the public.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed action at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action should be directed to:

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The backup contact person for these inquiries is:

Ellen Sampson
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Please direct requests for copies of the text (the “express terms”) of the regulations that are proposed for repeal and adoption, the Initial Statement of Reasons, the modified text of the regulations, if any, and other information upon which the rulemaking is based to Mr. Smith at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons, including the documents referred to in the initial statement of reasons on which the proposed changes are based. Copies may be obtained by contacting Mr. Smith at the above address or telephone listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Commission may adopt the proposed changes substantially as described in this notice. If the Commission makes modifications that are sufficiently related to the originally proposed text, the Commission will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to Mr. Smith at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Mr. Smith at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice of proposed action, the initial statement of reasons, and the text of the regulations in strikeout and underlined format, as well as the final statement of reasons when it is completed, can be accessed through our website at www.bcdc.ca.gov.